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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CHARLES CHOLMAKJIAN
5400 West Hillsdale Drive
Visalia, CA 93291

Physical Therapist License No. PT 16041

Respondent.

Case Nos. 1D-2001-62732 and 1D-2001-62866

OAH No. N2005010586

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical Therapy Board of California. He brought this action solely in his official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Deputy Attorney General, Thomas P. Reilly.

2. Respondent Charles Cholmakjian (Respondent) is represented by Richard C. Conway, Esq., Kahn, Soares & Conway, LLP, 219 N. Doughty Street, Hanford, California, 93230.

3. On September 5, 1989, the Physical Therapy Board of California issued

1 Physical Therapist License No. PT 16041 to Respondent. The License was in full force and
2 effect at all times relevant to the charges brought in Accusation No. 1D 2001 62732 and 1D
3 2001-62866 (the Accusation) and will expire on August 31, 2005, unless renewed.

4 JURISDICTION

5 4. The Accusation in this matter was filed before the Physical Therapy Board
6 of California (Board), Department of Consumer Affairs, on September 27, 2004 and is currently
7 pending against Respondent. The Accusation and all other statutorily required documents were
8 properly served on Respondent on September 27, 2004. Respondent timely filed his Notice of
9 Defense contesting the Accusation on October 8, 2004. A copy of the Accusation is attached as
10 exhibit A and incorporated here by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read and understands the charges and allegations
13 in the Accusation. Respondent has also carefully read and understands the effects of this
14 Stipulated Settlement and Disciplinary Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
18 the right to present evidence and to testify on his own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in the
26 Accusation. These admissions are limited to these proceedings and to any other administrative
27 proceedings pertinent to professional licensure and shall not be admissible in any civil or
28 criminal proceedings.

9. Respondent agrees that his Physical Therapist License is subject to discipline and he agrees to be bound by the Physical Therapy Board of California (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Physical Therapy Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Physical Therapy Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physical Therapist License No. PT 16041 issued to Respondent Charles Cholmakjian (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. SUSPENSION Respondent's license shall be suspended for 15 days.

2. RESTRICTION OF PRACTICE - HOME CARE The respondent shall not provide physical therapy services in a patient's home.

3. RESTRICTION OF PRACTICE - TEMPORARY SERVICES

1 AGENCIES The respondent shall not work through a temporary services agency
2 or registry for more than one physical therapy facility. Respondent shall notify the Board of any
3 employment through a temporary services agency or registry. Respondent shall notify any
4 physical therapy facility of his probationary status in the manner set forth in paragraph 17 below.

5 4. RESTRICTION OF PRACTICE - SOLO PRACTICE The respondent
6 shall be prohibited from engaging in the solo practice of physical therapy.

7 5. RESTRICTION OF PRACTICE - GRAVEYARD SHIFT The
8 respondent shall be prohibited from working a graveyard shift or any shift in which there is no
9 other employee on duty.

10 6. RESTRICTION OF PRACTICE - PROHIBITION OF SELF
11 EMPLOYMENT OR OWNERSHIP Respondent shall not be the sole proprietor
12 or partner in the ownership of any business that offers physical therapy services. Respondent
13 shall not be an officer of any corporation that offers or provides physical therapy services.
14 Respondent shall not employ physical therapists, physical therapist assistants, or physical therapy
15 aides.

16 7. RESTRICTION OF PRACTICE - PROHIBITION OF DIRECT
17 INSURANCE BILLING Respondent shall not have final approval over any
18 billings submitted to any third-party payors in any employment as a physical therapist.

19 8. PROBATION MONITORING COSTS Respondent shall reimburse the
20 Board's actual costs incurred for probation monitoring during the entire period of probation up to
21 a maximum of \$175.00 per month. Respondent will be billed at least quarterly. Failure to make
22 the ordered reimbursement within 60 days of the billing shall constitute a violation of the
23 probation order. In addition to the filing of an Accusation or the issuance of an administrative
24 citation, the filing of criminal charges shall be sought when appropriate.

25 9. COST RECOVERY The respondent is ordered to reimburse the Board the
26 actual and reasonable prosecutorial costs incurred by the Board in this matter in the amount of
27 \$8,600. Said costs shall be reduced, however, and the remainder forgiven, if Respondent pays
28 \$2,500.00 of said costs within ninety (90) days of the effective date of this Decision. In the event

Respondent fails to pay within ninety (90) days of the Decision, the full amount of costs shall be immediately due and payable. Failure to pay the ordered reimbursement, or any agreed upon payment, may constitute a violation of the probation order. The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board. If Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service, or by any other means of attachment of earned wages legally available to the Board. Failure to fulfill the obligation could also result in attachment to Department of Motor Vehicle registrations and or license renewals.

10. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California.

11. COMPLIANCE WITH ORDERS OF A COURT The respondent shall be in compliance with any valid order of a court. Being found in contempt of any court may constitute a violation of probation.

12. COMPLIANCE WITH CRIMINAL PROBATION AND PAYMENT OF RESTITUTION Respondent must not violate any terms and conditions of criminal probation and must be in compliance with any restitution ordered.

13. QUARTERLY REPORTS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

14. PROBATION MONITORING PROGRAM COMPLIANCE Respondent shall comply with the Board's probation monitoring program.

15. WRITTEN EXAM Within 90 days of the effective date of this decision, Respondent shall take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If respondent fails to pass the examination, he shall be suspended from practice until a repeat examination has been successfully passed.

16. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in person for interviews with the Board, or its designee, upon request at various

intervals and with reasonable notice.

17. NOTIFICATION OF PROBATION STATUS TO EMPLOYERS The respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the Accusation and the decision and order (stipulated settlement) to the employer. The respondent shall obtain written confirmation from the employer that the documents were received. If the respondent changes employment or obtains additional employment, the respondent shall provide the above notification to the employer and submit written employer confirmation to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

18. NOTIFICATION OF CHANGE OF NAME OR ADDRESS The respondent shall notify the Board, in writing, of any and all changes of name or address within ten (10) days.

19. PROHIBITED USE OF ALIASES Respondent may not use aliases and shall be prohibited from using any name which is not his legally-recognized name or based upon a legal change of name.

20. WORK OF LESS THAN 20 HOURS PER WEEK If the respondent works fewer than 192 hours in a period of three months, those months shall not be counted toward satisfaction of the probationary period. The respondent shall notify the Board if he works fewer than 192 hours in a three-month period.

21. TOLLING OF PROBATION The period of probation shall run only during the time respondent is practicing within the jurisdiction of California. If, during probation, respondent does not practice within the jurisdiction of California, respondent is required to immediately notify the probation monitor in writing of the date that respondent's practice is out of state, and the date of return, if any. Practice by the respondent in California prior to notification to the Board of the respondent's return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

1 22. VIOLATION OF PROBATION If respondent violates probation in any
2 respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke
3 probation and carry out the disciplinary order that was stayed. If an accusation or petition to
4 revoke probation is filed against respondent during probation, the Board shall have continuing
5 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
6 is final.

7 23. CESSATION OF PRACTICE DUE TO RETIREMENT, HEALTH OR
8 OTHER REASONS Following the effective date of this probation, if
9 respondent ceases practicing physical therapy due to retirement, health, or for other reasons,
10 respondent may request to surrender his license to the Board. The Board reserves the right to
11 evaluate the respondent's request and to exercise its discretion whether to grant the request or to
12 take any other action deemed appropriate and reasonable under the circumstances. Upon formal
13 acceptance of the tendered license, the terms and conditions of probation shall be tolled until
14 such time as the license is no longer renewable, the respondent makes application for the renewal
15 of the tendered license, or the respondent makes application for a new license.

16 24. COMPLETION OF PROBATION Upon successful completion of
17 probation, respondent's license or approval shall be fully restored.

18 25. PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHILE
19 ON PROBATION It is not contrary to the public interest for the
20 respondent to practice and/or perform physical therapy under the probationary conditions
21 specified in the disciplinary order. Accordingly, it is not the intent of the Board that this order,
22 the fact that the respondent has been disciplined, or that the respondent is on probation, shall be
23 used as the sole basis for any third party payor to remove respondent from any list of approved
24 providers.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Richard C. Conway. I understand the stipulation and the effect it will have on my Physical Therapist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physical Therapy Board of California.

DATED: February 25, 2005.

Original Signed By: _____
CHARLES CHOLMAKJIAN
Respondent

I have read and fully discussed with Respondent Charles Cholmakjian the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: February 25, 2005.

Original Signed By: _____
RICHARD C. CONWAY, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physical Therapy Board of California of the Department of Consumer Affairs.

DATED: February 25, 2005.

BILL LOCKYER, Attorney General
of the State of California

Original Signed By: _____
THOMAS P. REILLY
Deputy Attorney General

Attorney for Complainant

Exhibit A

Accusation Nos. 1D 2001 62732 and 1D 2001 62866

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OAH No. N2005010586

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 28, 2005.

It is so ORDERED March 29, 2005.

Original Signed By: Donald A. Chu, PhD, PT, President
FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS